NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RALEY'S, a California corporation, Plaintiff - Appellee, v. UNITED COIN MACHINE CO., a Nevada corporation; APT GAMES INC., Defendants - Appellants.	No. 04-15905 D.C. No. CV-03-01376-JCM MEMORANDUM*

RALEY'S, Plaintiff - Appellee, ALLIANCE GAMING CORPORATION; APT GAMES INC., Defendants - Appellants, v. UNITED COIN MACHINE CO., Defendant - Appellant.	No. 04-16847 D.C. No. CV-03-01376-JCM

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted February 14, 2006
San Francisco, California

Before: REINHARDT, PAEZ, and TALLMAN, Circuit Judges.

Appellants Alliance Gaming Corporation and APT Games, Inc. (collectively "Appellants") appeal the district court's vacatur of their arbitration award against Appellee Raley's and the district court's decision to grant Raley's motion for attorneys' fees and costs. We reverse.

A district court's vacatur of an arbitration award is reviewed de novo. *Fidelity Fed. Bank, FSB v. Durga Ma Corp.*, 386 F.3d 1306, 1311 (9th Cir. 2004). But "[w]hile we review de novo the decision to vacate or confirm an arbitration award, review of the award itself is both limited and highly deferential . . . ." *Poweragent, Inc. v. Elec. Data Sys. Corp.*, 358 F.3d 1187, 1193 (9th Cir. 2004) (internal quotation marks omitted). "It is generally held that an arbitration award will not be set aside unless it evidences a 'manifest disregard for law.'" *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1060 (9th Cir. 1991). Thus, so long as an arbitrator simply considers the well-defined, explicit, and clearly applicable law, a reviewing court is precluded from ruling that the arbitrator

manifestly disregarded the law, even if the reviewing court finds that the arbitrator interpreted or applied the law incorrectly, or produced an erroneous decision.

Here, the arbitrator found the space lease agreement at issue to be ambiguous, and admitted parol evidence to clarify the meaning of relevant provisions. The district court determined that the arbitrator misread the agreement—an error that does not fall within the scope of the manifest-disregard-of-the-law standard. *See Bernhardt v. Polygraphic Co. of Am.*, 350 U.S. 198, 203 n.4 (1956) ("Whether the arbitrators misconstrued a contract is not open to judicial review."). The district court subsequently determined that the arbitrator misapplied the parol evidence rule. However, misapplying the parol evidence rule does not fall within the scope of the manifest-disregard-of-the-law standard because the arbitrator did not ignore it. *See Luong v. Circuit City Stores, Inc.*, 368 F.3d 1109, 1112 (9th Cir. 2004) ("It must be clear from the record that the arbitrators recognized the applicable law and then ignored it.") (internal quotation marks omitted).

After considering such parol evidence, the arbitrator concluded that Raley's had breached the implied covenant of good faith and fair dealing. Under Nevada law, the implied covenant of good faith and fair dealing can modify the express terms of a contract, and the Supreme Court of Nevada has held that a party may

breach the implied covenant of good faith and fair dealing even where it complies with the express terms of the contract. *J.A. Jones Constr. Co. v. Lehrer McGovern Boris, Inc.*, 89 P.3d 1009, 1016 (Nev. 2004).

Thus, the district court exceeded its authority when it vacated the arbitration award and erred when it granted Raley's motion for attorneys' fees and costs. The matter is remanded for entry of a confirmation award in favor of Appellants, which includes the attorneys' fees and costs that the arbitrator granted as part of the arbitration award.

REVERSED AND REMANDED.